

ESTTA Tracking number: **ESTTA389741**

Filing date: **01/24/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Varsity Spirit Corporation
Granted to Date of previous extension	01/23/2011
Address	6745 Lenox Center Court, Suite 300 Memphis, TN 38115 UNITED STATES
Attorney information	Carissa L. Alden Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES cla@cll.com, asc@cll.com, trademark@cll.com Phone:212-790-9200

Applicant Information

Application No	77947833	Publication date	07/27/2010
Opposition Filing Date	01/24/2011	Opposition Period Ends	01/23/2011
Applicant	Lewiston, Jason Paul JasonLewiston@GMail.com 21790 Coolidge Highway Oak Park, MI 48237 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms

Grounds for Opposition

Other	Please see attached pleading.
-------	-------------------------------

Attachments	Ltr to Commissioner re NOO for SOLAR VARSITY.pdf (1 page)(140617 bytes) SOLAR VARSITY NOO.pdf (9 pages)(41477 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Carissa L. Alden/
Name	Carissa L. Alden
Date	01/24/2011



Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, NY 10036
(212) 790-9200 Tel
(212) 575-0671 Fax
www.cll.com

January 24, 2011

By Electronic Filing

Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Varsity Spirit Corporation
Notice of Opposition Against
Jason Paul Lewiston's
Application to register SOLAR VARSITY
Ref. No. 25894.105

Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 77/947,833 published in the Official Gazette on July 27, 2010. Contemporaneously with the electronic filing of this Notice of Opposition, we are arranging for an electronic payment in the amount of \$300 to cover the filing fee.

If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Please address all future correspondence to the attention of Arlana S. Cohen of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Carissa L. Alden/
Carissa L. Alden

Enclosures

cc: Arlana S. Cohen, Esq. (w/encs.)

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----	X	
VARSITY SPIRIT CORPORATION,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
JASON PAUL LEWISTON,)	
)	
Applicant.)	
-----	X	

NOTICE OF OPPOSITION

In the matter of trademark application Serial No. 77/947,833, filed March 1, 2010 and published for opposition in the Official Gazette of July 27, 2010:


Varsity Spirit Corporation, Inc., a Tennessee corporation, having a business address at 6745 Lenox Center Court, Memphis, TN 38115 (“Opposer”), believes it will be damaged and hereby opposes the registration of said trademark. The grounds for opposition are as follows:

1. Applicant, Jason Paul Lewiston (“Applicant”) seeks to register “SOLAR VARSITY” as a trademark for use with respect to “Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms” in Class 25 (hereinafter referred to as “Applicant’s Mark”), based on Applicant’s alleged intent-to-use Applicant’s Mark.
2. Opposer, together with its subsidiaries and related companies all of whom are in direct privity with one another will hereinafter be referred to individually and collectively as the “Varsity Companies”), is, and has for many years, been engaged in the business of, *inter alia*, offering goods and services directed to purchasers of athletic wear using its trademark and trade name “Varsity” (“Opposers’ Trade Name”).

3. Opposer and/or their predecessors and licensees have used, since at least as early as 1939, and continue to use in commerce, many valuable trademarks, including, without limitation, the mark “VARSITY” for, *inter alia*, various products and services, including without limitation sports shirts, pants, jackets, footwear and many other forms of athletic wear (“Opposer’s Common Law Rights”).

4. The Varsity Companies are the owners of the following trademark and service mark registrations in the United States without limitation:

MARK	REG. NO.	REG. DATE	GOODS/SERVICES
VARSITY SPORT	2,293,083	11/16/99	Athletic wear, namely, sports shirts, sports shorts, gloves, vests, tops, skirts, jumpers, warm-up suits, pants, sweaters, athletic shoes, sweatshirts, T-shirts, athletic shorts, sweat-pants, tights, leotards, unitards, dresses, and jackets
JUNIOR VARSITY SPIRIT FASHIONS	1,575,830	1/02/90	Mail order catalog services in the field of cheerleader uniforms for younger age groups
VARSITY SPIRIT FASHIONS	1,680,452	3/24/92	Men’s and women’s cheerleader and dance team clothing; namely, skirts, sweats, sweaters, tops, pants, shoes
VARSITY SPIRIT CORPORATION	1,796,645	10/05/93	Conducting cheerleading, dance teams and gymnastics training camps, clinics, seminars, workshops, competitions, championships and tournaments; per-forming cheerleading at bowl games; private gymnastics, cheerleader and dance team coaching; clothing; namely, cheerleader and dance team uniforms with pom-poms, gloves, vests, tops, shirts, skirts, jumpers, warm-up suits, pants, sweaters, shoes, socks, sweatshirts, T-shirts, shorts, sweat pants, tights, leotards, unitards, dresses and jackets

V VARSITY 	2,357,303	6/13/00	Cheerleader uniforms, drill team uniforms and pompon squad uniforms
VARSITY	2,526,564	1/08/02	Athletic shirts, athletic shorts, athletic tops, body suits, dresses, hats, jackets, jerseys, jumpers, leotards, pants, skirts, sweaters, sweat pants, sweat shirts, T-shirts, unitards, and warm-up suits sold to colleges, high schools and school-affiliated teams, clubs, groups and individuals by direct sales through sales representatives or employees of applicant, through mail order catalog services or through campus book stores or other retail outlets located at colleges and high schools; uniforms for cheerleaders, drill teams, pompon squads, pep squads, mascots, bands and booster clubs
VARSITY	2,082,554	7/22/97	Men's underwear; T-shirts, briefs; athletic shirts; undergarments; pajamas; robes; nightshirts; loungewear and boxer shorts sold through retail outlets
VARSITY	1,812,198	12/21/93	Men's and women's sleepwear, underwear, night shirts, loungewear and boxer shorts
VARSITY	3,696,209	10/13/09	Pre-recorded videotapes and compact discs containing music and/or movies; camps, namely, children's recreational camps, cheerleading camps, and soccer camps
VARSITY CHOREOGRAPHY	3,320,692	10/23/07	Providing educational and instructional courses in the fields of spirit, cheer and dance delivered both online and through the classroom
VARSITY (Stylized)	879,543	10/28/69	Pajama and robe sets

VARSITY WIRED	3,371,683	1/22/08	Entertainment services, namely, providing a website featuring audio and video presentations featuring cheerleading and dance, cheerleading and dance competitions, audio clips, video clips, photographs and fashion
VARSITY.COM	3,418,764	4/29/08	Online retail store services featuring pre-recorded videotapes and compact discs, school supplies, jewelry and home furnishings; providing a website which features advertisements for the goods and services of others on topics of interest to teenage boys and girls on a global computer network; travel agency services, namely, making reservations; and providing an online database in the field of topics of interest to teenage boys and girls, namely, fashion
VARSITY	3,436,493	5/27/08	Online retail store services featuring, pre-recorded videotapes and compact discs, school supplies, jewelry, home furnishing; providing a website which features advertisements for the goods and services of others on topics of interest to teenage boys and girls on a global computer network; travel agency services, namely, making reservations; providing an online database in the field of topics of interest to teenage boys and girls, namely fashion
VARSITY.COM	3,689,696	9/29/09	Camps, namely, children's recreational camps, cheerleading camps, and soccer camps
VARSITY UNIVERSITY	3,797,635	6/1/10	Providing educational and instructional courses in the fields of cheerleading routines, stunts, sequences, skills and drills, choreography and dance technique, and safety information to participants in the spirit, cheer, and dance team industries delivered both online and through the classroom

5. The Varsity Companies are also the owners of the following allowed trademark applications in the United States without limitation:

MARK	SER. NO.	FILED	GOODS/SERVICES
<p>Varsity (Stylized)</p> <p>V A R S I T Y</p>	77/500,598	6/17/08	<p>Athletic shirts, athletic shorts, athletic tops, bodysuits, dresses, hats, jackets, jerseys, jumpers, leotards, pants, skirts, sweaters, sweatpants, sweatshirts, t-shirts, unitards and warm-up suits sold to colleges, high schools and school-affiliated teams, clubs, groups and individuals by direct sales through sales representatives or employees of applicant, through mail order catalogue services or through campus bookstores or other retail outlets located at colleges and high schools; uniforms for cheerleaders, drill teams, pom pom squads, pep squads, mascots, bands and booster clubs; footwear, namely, athletic shoes, cheerleader shoes, dance shoes, slippers, flip-flops and sandals; online retail store services featuring pre-recorded videotapes and compact discs, school supplies, jewelry and home furnishings; providing a web site which features advertisements for the goods and services of others on topics of interest to teenage boys and girls on the global computer network, mail order catalogue services in the field of cheerleader uniforms; camps, namely, children's recreational camps, cheerleading camps and soccer camps; entertainment services, namely, providing a website featuring audio and video presentations featuring cheerleading and dance, cheerleading and dance competitions, photographs and fashion; conducting cheerleading, dance and gymnastics competitions, camps and events, and providing instruction and training in the fields of sports, cheerleading, gymnastics and dance;</p>

			providing instruction and demonstration services in the fields of cheerleading, dance and gymnastics for cheerleaders, pom pon squads, dance teams, mascots, gymnasts and other school groups; training of spirit leaders, namely, cheerleaders, pom pon girls, mascots and rally groups; providing choreography instruction and custom music mixing services to cheerleaders and spirit teams; providing cheerleading camps featuring workshops on chants, tumbling, dance routines, pom pons and related skills; educational services, namely, courses for the training and instruction of dance teams, drill teams and pom pon squads; providing educational and instructional courses in the fields of spirit, cheer and dance delivered both online and through the classroom
VARSITY	77/324,887	11/08/07	Footwear, namely, cheerleader shoes, dance shoes, slippers, flip-flops and sandals; athletic shoes
VARSITY TV	77/620,494	11/24/08	An interactive website featuring entertainment information and cheerleading videos for students and teens; online social networking services for students and teen

Opposer's Trade Name, Common Law Rights, trademark/service mark applications and trademark/service mark registrations are referred to hereinafter as the "VARSITY Family of Marks."

6. By virtue of extensive use in commerce of the VARSITY Family of Marks in the United States, the relevant trade and public have come to associate goods and services bearing the VARSITY Family of Marks with Opposer.

7. The applied-for goods of Applicant and the goods and services of Opposer are identical and/or substantially similar and related.

8. Applicant's Mark, as applied to the goods set forth in the application herein opposed, is identical to and/or resembles Opposer's VARSITY Family of Marks as applied to their goods and services such that it is likely to cause confusion, mistake and/or deception.

9. If Applicant is permitted to register Applicant's Mark for the goods set forth in the application herein opposed, confusion of the trade and/or public is likely to result, such confusion resulting in damage and injury to Opposer. Any persons familiar with Opposer and/or the goods and services of Opposer would be likely to believe that Applicant's goods are sponsored by or offered under license from or otherwise affiliated with Opposer. Furthermore, any objection to or fault found with Applicant's services offered under, or goods sold in connection with, Applicant's Mark would necessarily reflect on and seriously injure the reputation that Opposer has established for the goods sold and services offered under the VARSITY Family of Marks.

10. Consumers and potential consumers, on seeing Applicant's Mark used in connection with its goods are likely to believe, in error, that such goods are offered in association or affiliation with or under license from Opposer.

11. If Applicant were granted a registration for Applicant's Mark, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that registration of the mark set forth in application Serial No. 77/947,833 be refused and that this opposition be sustained.

The filing fee of \$300.00 is enclosed herewith and any additional fees or deficiencies deemed to be due and owing in connection with this opposition may be charged to Deposit Account No. 03-3415 and any overpayment may be credited thereto.

Dated: January 24, 2011
New York, New York

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Carissa L. Alden/
Arlana S. Cohen
Carissa L. Alden
1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **NOTICE OF OPPOSITION** was served by United States Mail, First Class, by depositing it, postage prepaid, in a depository under the exclusive custody and control of the United States Postal Service, on January 24, 2011 addressed to:

Jason Paul Lewiston
21790 Coolidge Hwy
Oak Park, MI 48237-3156

/Carissa L. Alden/
Carissa L. Alden